Supreme Court, U.S.
FILED

01-416 JUL 09 2001

OFFICE OF THE

No. _____

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**In The**

**SUPREME COURT OF THE UNITED STATES**

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John L. Corrigan, *Petitioner*

v.

Imaginetics, Inc.

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On Petition For a Writ of Certiorari to the
Supreme Court of The State of Washington

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# PETITION FOR A WRIT OF CERTIORARI

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John L. Corrigan
6103 S. 295th Court
Auburn, WA 98001
253.941.0815

28pp

Corrigan, a pro se litigant, alleges "due process" violations under the 14th Amendment to the U.S. Constitution by both the state court of appeals and the trial court.

## QUESTIONS PRESENTED

1. Whether the appellate court could properly review the trial court decision without Corrigan's designated clerk's papers - which the trial court failed to submit to the appellate court.

2. Whether the trial court showed bias and denied Corrigan "a fair trial in a fair tribunal" when it limited legitimate discovery by:

- Denying motions to compel;
- Instituting a protective order – restricting discovery;
- Denying the deposition of a critical, key party; and
- Denying a Motion for Court's Recusal while imposing a $500 cost for bringing the motion.

## PARTIES TO PRECEEDING

**Imaginetics, Inc.**

A corporation that is wholly owned by:

Curt Harvey

And

Jim Flynn

## OPINIONS BELOW

The opinions of the Supreme Court of Washington, the Appellate Court of Washington and the King County Superior Court are unreported.

## JURISDICTION

The judgment of the Court of Appeal of Washington, Division I, was entered on February 14, 2000. (Appendix A) The Court of Appeal denied a motion for reconsideration on October 27, 2000. (Appendix B) On April 10, 2001, the Supreme Court of Washington denied a petition for hearing. (Appendix C)

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

## CONSTITUTIONAL PROVISIONS

The "due process clause" of the 14th Amendment to the U.S. Constitution.

## STATEMENT OF THE CASE

The federal question was raised:

- In the state supreme court when Corrigan specifically requested that court to review 14th Amendment rights under the US Constitution (Petition For Review)– violated by the state appellate court – clearly identified in the "issues presented for review."

- In the state superior court when Corrigan asked the trial judge to recuse himself for not giving Corrigan an opportunity for a fair and impartial hearing.[1] (Appendix D)

The appellate court made determinations based solely on defendant's submission of clerk's papers – Corrigan's designated clerk's papers did not reach the appellate court. Corrigan designated clerk's papers be submitted to the appellate court. Corrigan paid the copy cost but not the "transmittal fee" of $25 for each request. There were two requests ($50). The superior court refused to submit the designated papers to the appellate court.

The trial judge denied all motions to compel discovery without explanation or justification. A protective order was eventually made against Corrigan without explanation or justification. Corrigan submitted a motion to depose Curt Harvey (a key defendant) which was denied by the trial judge.

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[1] *The right to a judge free from bias and prejudice is based on the due process clause of the federal Constitution, and on the constitutional right to a fair trial.* Plaintiff's Motion For Court's Recusal, p. 6. (See Appendix D)

Corrigan submitted a motion for the court's recusal, which was also denied by the trial judge.[2]

## ARGUMENT

### Corrigan Did Not Receive Appellate Court Review

Corrigan designated superior court clerk's papers be transmitted to the appellate court. In addition to the cost of copying the documents, the superior court added a $25 "transmittal fee." Because there were two requests for documents, Corrigan was charged an additional cost of $50. Rules of Appellate Procedure, Rule 9.7 limits the cost to $.50 per page. Corrigan paid the copying charges but not the "transmittal fees." The superior court refused to submit the designated papers to the appellate court. This is in direct violation of RAP 9.7. (Appendix E)

> The clerk of the trial court shall make copies at cost, not to exceed .50 cents a page, . . . Upon receipt of payment, the clerk shall forward the clerk's papers to the appellate court. RAP 9.7 *Washington Court Rules, 2000.*

It was the appellate court's duty to compel the superior court to submit requested clerk's papers.

> The due process clause guarantees an aggrieved party the opportunity to present a case and have its merits fairly judged. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 433 (1982)

> Our system is grounded on the notion that truth will most likely be served if the decisionmaker — judge or jury -- has the benefit of forceful

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[2] Corrigan was ordered to pay costs of $500 for bringing the motion.

argument by both sides. *Herring v. New York*, 422 U.S. 853, 862, (1975).

**Trial Court Judge Showed Bias and Denied Corrigan "A Fair Trial In A Fair Tribunal"**

Corrigan is pro se. He knows he is on "hallowed ground." His interrogatories were limited and not designed to harass or intimidate defendants. The motions to compel were not designed to harass or intimidate the trial judge. Corrigan was just trying to seek legitimate discovery. Yet, Corrigan is subjected to the willful disregard of the discovery process by defendant, and the prejudice of the trial court. Corrigan did nothing to deserve a "protective order." Corrigan was acting pro se, which is the only possible source of the trial judge's prejudice.

The trial court's refusal to allow the deposition of defendant Curt Harvey, **the** most important individual/party/defendant, is inexcusable. This is the single most important individual in the presentation of Corrigan's case. If the civil rules stated that a plaintiff could only depose one individual – Corrigan would have designated that defendant. Instead, Corrigan deposed 4-5 other individuals to gather information to more effectively question defendant Harvey. However, by that time the trail judge imposed a protective order. Even by motion the trial court denied Corrigan this critical piece of discovery.

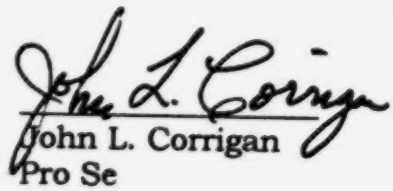
> Every party is entitled to an impartial tribunal. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980).
>
> Even in civil cases, the district court may not adopt procedures that tend to significantly favor one party over the other. *Id.*, 242-243.

The trial court abuses its discretion in discovery when it reaches a decision that is so arbitrary and unreasonable that it results in a clear and prejudicial error of law. *27 C.J.S., Discovery §4, p. 11.*

**CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,



John L. Corrigan
Pro Se

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

| | | |
|---|---|---|
| John L. Corrigan, Appellant | ) | No. 44934-6-I |
| | ) | Division One |
| v. | ) | Unpublished Opinion |
| | ) | |
| Imaginetics, Inc. Respondent | ) | Filed: Feb 14 2000 |

PER CURIAM, John Corrigan sued his employer, Imaginetics, Inc. for breach of contract, unjust termination and fraudulent misrepresentation after Imaginetics fired him. Corrigan challenges the trial court's dismissal of his claims on summary judgment, as well as the court's rulings denying his discovery requests and his motion for recusal. Because there are not issues of fact showing that a contract existed, that Imaginetics contravened public policy by firing Corrigan or that Imaginetics made false representations to Corrigan, we affirm.

## FACTS

Imaginetics needed help setting up a new accounting software program called Peachtree. Imaginetics contacted Accountemps, a temporary employee agency, and specifically requested a temporary employee with experience using Peachtree. In November 1997, Accountemps sent John Corrigan. A few days after Corrigan began working at Imaginetics, he told owners Jim Flynn and Curt Harvey that Imaginetics had serious accounting problems. On this basis, Flynn and Harvey hired Corrigan as a consultant. Flynn and Harvey rejected Corrigan's initial proposal of a six month contract at $50 per hour. Corrigan then proposed a one month contract. He suggested Imaginetics pay $25 per hour

up front and defer an additional $25 per hour until July 1998.[1] Flynn and Harvey accepted.

At the end of Corrigan's one month consulting contract, Corrigan, Flynn and Harvey discussed Corrigan's future employment as Imaginetics. Imaginetics was not willing to continue paying Corrigan $50 per hour. But during a December 1997 meeting with Corrigan, Flynn and Harvey hired him as a full time employee for $25 per hour. Flynn and Harvey told Corrigan that they did not want to give him a contract. Flynn and Harvey did not discuss a term of years for Corrigan's employment or paying Corrigan $50,000 per year. Even so, Corrigan contends he left the meeting with the impression that, in six months, Imaginetics would give him a two or three year, $50,000 per year contract.

Soon after Imaginetics hired Corrigan as a full time employee, Imaginetics information systems manager Bob Lewis noticed that Corrigan did not have significant experience with Peachtree. Moreover, Harvey and fromer Imaginetics bookkeeper Diana Martin both observed that Corrigan lacked basic tax and bookkeeping knowledge. In addition, Corrigan printed checks for large sums of money made payable to himself and family members. Although Corrigan voided the checks, Flynn and Harvey discussed there concerns with Corrigan. After several employee complaints about Corrigan's conduct and confirmation by an outside accountant that Corrigan had not implemented Peachtree, Harvey and Flynn fired Corrigan. Corrigan sued Imaginetics, alleging breach of contract, unjust termination, and fraudulent misrepresentation. The trial cout granted Imaginetics' motion for summary judgment, and Corrigan appeals.

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[1] Corrigan admits that although part of his payment was deferred, his contract was for one month only; he was not employed through July 1998.

## DISCOVERY RULINGS

Corrigan argues that the trial court abused its discretion by issuing a protective order and denying several discovery motions, including a motion to produce interrogatories and a motion to stipulate to non-stenographic depositions. Discovery motions are reviewed for abuse of discretion. See Hertog v. City of Seattle, 88 Wn.App.41, 47, 943 P.2d 1153 (1997), aff'd 138 Wn.2d 265, 979 P.2d 400 (1999). A trial court abuses its discretion if its ruling is manifestly unreasonable or is based upon untenable grounds or reasons. State v. Stenson, 132 Wn.2d 668, 704, 940 P.2d 1239 (1997).

In addition, it is the appellant's burden to provide the record necessary for the appellate court to review the issues raised. See State v. Lough, 70 Wn.App. 302, 335, 853 P.2d 920 (1993), aff'd, 125 Wn.2d 847, 889 P.2d 487 (1995). In his designation of clerk's papers, Corrigan included his discovery motions and the orders denying the discovery motions; however he refused to pay the entire fee charged by the King County Superior Court. As a result, we do not have the trial court's order denying Corrigan's motion to produce interrogatories, the protective order or the order denying Corrigan's motion for a stipulation to non-stenographic depositions. And we do not have all of Corrigan's motions. The failure of Corrigan to provide the record precludes any relief on appeal.

Even so, we not the balance of the record reveals that Imaginetics fully and completely responded to all of Corrigan's interrogatories. And Imaginetics is under no obligation to stipulate to Corrigan's plans for deposition of witnesses by non-stenographic means. SEE CR 30(b)(4). The limited record on appeal does not establish any abuse of discretion on discovery matters.

## RECUSAL

Some months into the litigation, Corrigan filed a "motion for recusal" alleging bias on the judge's part. Corrigan argues that the trial court erred by denying is motion. Recusal lies within the sound discretion of the trial court. Marriage of Farr, 87 Wn.App. 177, 188, 940 P.2d 679 (1997), review denied, 134 Wn.2d 1014, 958 P.2d 316 (1998). Corrigan had the burden of demonstrating prejudice on the judge's part. See RCW 4.12.040; Marriage of Farr, 87 Wn.App. at 188. According to Corrigan, "the trial judge's outright denial" of his discovery motions demonstrated bias. However, the mere fact that a judge has denied a motion is not evidence of bias against the moving party. See, e.g., Marriage of Farr, 87 Wn.App. at 188. Corrigan may disagree with the court's rulings, but the record does not reflect any evidence of bias.

## SUMMARY JUDGMENT

Corrigan contends that the trial court erred by dismissing his breach of contract, unjust termination and fraudulent misrepresentation claims on summary judgment. We review a summary judgment order de novo, engaging in the same inquiry as the trial court. Enterprise Leasing, Inc. v. City of Tacoma, 139 Wn.2d 546, 551, 998 P.2d 961 (1999). We consider all facts and reasonable inferences from the facts in the light most favorable to the nonmoving party. Enterprise Leasing, Inc., 139 Wn.2d at 551. Summary judgment is proper if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. CR 56(c); Kruse v. Hemp, 121 Wn.2d 715, 722, 853 P.2d 1373 (1993).

### *Breach of Contract Claim*

Corrigan's arguments are difficult to follow, but he essentially argues that Imaginetics breached an agreement to give him an employment contract in June 1998. Generally, employment in Washington is

"at-will;" in other words, an employer can discharge an employee with or without cause, absent an agreement to the contrary. See Reninger v. Dep't of Corrections, 134 Wn.2d 437, 446, 951 P.2d 782 (1998); Roberts v. Atlantic Richfield Co., 88 Wn.2d 887, 894, 568, P.2d 764 (1977). Here, Corrigan alleges he had an implied "agreement to the contrary" with Imaginetics. An implied contract cannot be established by the subjective interpretation of one party. Roberts, 88 Wn.2d at 894.

Corrigan alleges no facts that could provide an inference that he had an implied contract with Imaginetics. He simply offers the conclusory assertion that Curt Harvey and James Flynn agreed to an implied contract at a lunch meeting. But in his own deposition, Corrigan admits that the $50,000 per year salary allegedly promised to him may never have been mentioned by Harvey or Flynn. Corrigan also admits that the two year term of the contract was only his understanding of the agreement. "My understanding-and this is just my understanding-was the contract would work out and I'd be there at least two years." Corrigan cannot create a material issue of fact by making assertions that merely contradict, without explanation, his previously given clear testimony. See Sun Mountain Prod., Inc., v. Pierre, 84 Wn.App. 608, 617-18, 929 P.2d 494 (1997).

*Unjust Termination Claim*

Corrigan also argues that his termination was unjust. An employer may terminate employment unless the discharge of an employee contravenes a clear mandate of public policy. Reninger, 134 Wn.2d at 446. A clear mandate of public policy is contravened in four limited situations: 1) where employees are fired for refusing to commit an illegal act; 2) where employees are fired for performing a public duty or obligation; 3) where employees are fired for exercising a legal right or privilege; and 4) where employees are fired in retaliation for reporting employer misconduct.

Reninger, 134 Wn.2d at 447. Corrigan offers only the conclusory statement that Imaginetics fired him without "just cause." He does not allege any facts from which an inference can be drawn that Imaginetics contravened public policy.

*Fraudulent Misrepresentation Claim*

Corrigan contends that Imaginetics committed fraudulent misrepresentation by misleading him into believing he had an employment contract. The nine elements of fraud are: 1) representation of an existing fact; 2) materiality; 3) falsity; 4) the speaker's knowledge of its falsity; 7) plaintiff's reliance on the truth of the representation; 8) plaintiff's right to rely upon it; and 9) damages suffered by the plaintiff. Stiley v. Block, 130 Wn.2d 486, 505, 925 P.2d 194 (1996). Each element of fraud must be established by clear, cogent and convincing evidence. Stiley, 130 Wn.2d at 505.

In his deposition, Corrigan alleges only three facts in support of his fraudulent misrepresentation claim. First, that during the December 1997 lunch meeting, Imaginetics refused to enter into a written agreement with Corrigan. Second, that Curt Harvey did not give Jim Flynn's home phone number to Corrigan. Third, that Flynn and Harvey told Corrigan that he did not handle a phone line problem properly.

Viewed in a light most favorable to Corrigan, these facts do not address the materiality of the representations, the falsity of the representations, Flynn and Harvey's knowledge of "falsity," their intent that Corrigan should act upon the representations, Corrigan's reliance upon the truth of the representations, or any damages suffered by Corrigan. No genuine issues of material fact exist. The trial court properly dismissed the fraudulent misrepresentation claim.

Affirmed.

FOR THE COURT:

"/s Kennedy, C. J."
"/s Agid, A.C. J."
"/s Becker, J."

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

| | | |
|---|---|---|
| John L. Corrigan, Appellant | ) | No. 44934-6-I |
| v. | ) | ORDER DENYING MOTION FOR RECONSIDERATION |
| Imaginetics, Inc. Respondent | ) | |

The court having received and considered appellant's Motion for Reconsideration which was filed on March 1, 2000, and the panel having determined that the motion should be denied, Now Therefore, It is Hereby

ORDERED that appellant's Motion for Reconsideration is denied.

Dated this 27th day of October, 2000.

FOR THE COURT: "s/Kennedy, J."
Presiding Judge

THE SUPREME COURT OF WASHINGTON

| | | |
|---|---|---|
| John L. Corrigan,<br>Petitioner, | ) | NO. 70514-3 |
| | ) | ORDER |
| v. | ) | |
| | ) | C/A NO. 44934-6-I |
| Imaginetics, Inc.<br>Respondent | ) | |

Department I of the Court considered this matter at its April 10, 2001, Motion Calendar, and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petition for Review is denied.

DATED at Olympia, Washington this 10th day of April, 2001.

"s/Gerry L. Aleland"
CHIEF JUSTICE

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING
JUDGE Jay V. White

| | |
|---|---|
| JOHN L. CORRIGAN, Plaintiff, v. IMAGINETICS, INC, Defendant. | No. 98-2-05580-4 KNT<br>PLAINTIFF'S MOTION FOR COURT'S RECUSAL |

COMES NOW John L. Corrigan, plaintiff, pro se, pursuant to the due process clause of the federal Constitution, the constitutional right to a fair trial, and Canon 3 of the Washington State Code of Judicial Conduct (CJC), and respectfully requests that this court disqualify itself. This recusal motion is based upon allegations of bias, prejudice, and lack of impartiality on the part of this court. Plaintiff submits the following:

**RELIEF REQUESTED**

1. A new judge.
2. A fair and impartial opportunity for discovery.
3. Reversal of motions relating to discovery - including cost judgments relating to same.
4. A new trial date to reflect the fair opportunity for discovery.
5. Other fair and impartial adjustments to this proceeding that a new judge may deem appropriate.

**STATEMENT OF FACTS**

A complaint was instituted against defendant Imaginetics alleging breach of contract and unjust dismissal on 3/11/98. Plaintiff's Interrogatories To



APPENDIX D

Defendant and Request For Documents was submitted 6/9/98. On 9/23/98 Plaintiff motioned the court to compel interrogatories and documents. Plaintiff alleged unreasonable delays, incomplete and evasive answers. On 10/15/98 an Order Denying Plaintiff's Motion To Produce Interrogatories was entered based on the consideration of plaintiff and defendant's supporting documents. No other reason was given.

On 10/20/98 Plaintiff's Motion For Reconsideration was submitted to the court. This was denied on 10/30/98. On 11/8/98 plaintiff wrote a letter to Presiding Judge Brian D. Gain requesting a new judge. Plaintiff alleged that the Motion To Compel decision was outside the parameters of judicial discretion and called into question the integrity and impartiality of the court. This was responded verbally (not by any judge) that nothing would be done based on the letter).

On 1/4/99 plaintiff submitted a letter to Judge Jay V. White respectfully requesting that he recuse himself citing CJC 3 and bias/prejudice relating to denial of motion to compel.

On 1/22/99 plaintiff motioned the court for an expansion of discovery process. It alleged that because problems were encountered with working in "good faith" that the court grant (1) personal oaths; (2) other than non-stenographic recording of testimony; (3) telephone depositions; (4) up to 6 Imaginetic employees be made available for short depositions at a mutually convenient time. Plaintiff also requested a "Discovery Conference" because of the difficulties relating to the discovery process. On 2/3/99 in an Order On Civil Motion the court ruled: (1) no basis for recusal; (2) no basis shown for expansion of discovery; (3) discovery may proceed as provided in civil rules; (4) motion does not appear to have been brought in conformity to LR 7, therefore, recusal, expansion and oral argument are all denied.

On 2/16/99 plaintiff submitted a Motion To Compel for plaintiff's 2nd request for documents. In

plaintiff's 2nd request, defendant objected to 10 of the 12 requests. Two requests[1] were claimed to be destroyed. In the most abusive, a claimed objection that defendant did not have an address and that it would be "unduly burdensome."[2]

On 2/18/99 defendant submitted Imaginetics' Motion For A Protective Order relating to (1) non-disclosure of financial information; (2) quashing Plaintiff's 3rd request for documents and request for entry for inspection; (3) preventing any party from discovery requests without leave of the court; (4) granting plaintiff's depositions for two employees to be taken at defendant's law offices; (5) defendant taking plaintiff's deposition; (6) restraining plaintiff from entering Imaginetics facility; and (7) fees and costs incurred in bring their motion. On 2/26/99 in Protective Order everything that the defendant had asked for was granted except for reasonable costs of $500.

Also on 2/26/99 plaintiff's Motion To Compel (2nd Request for Documents) was denied. Further, reasonable costs and attorney fees were granted by the court in the amount of $250 against plaintiff.

On 3/4/99 plaintiff submitted a Motion For Reconsideration of the protective order.[3] On this same day plaintiff submitted a Motion For Discovery as required by the Protective Order for a 4th Request For Documents and a future deposition of defendant Curt Harvey.

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[1] The ones not objected to.

[2] This claim was also foolish because the name and address was suppose to be included in a previously supplied list. Further, when defendant finally submitted the last name (which they had previously objected to) of the individual they claimed it was "Bincent." Later testimony identified the individual as "Vincent."

[3] Order Denying Plaintiff's Motion To Compel, was not included in this motion for reconsideration. In spite of both documents having been signed by the court on 2/26/99, the Motion To Compel was not received by plaintiff until the 9th or 10th of March. Underneath the postage slip dated 3/8/99 was a notation that the letter had originally been "returned for postage."

## STATEMENT OF ISSUES

Whether Judge's rulings relating to discovery can be shown as a basis for bias and/or prejudice such that judicial actions can be questioned for impartiality - and whether under those circumstances recusual is obligatory.

## EVIDENCE RELIED UPON

### A. DISCOVERY INFORMATION

***First Motion To Compel***

The first motion to compel was quite a shock to plaintiff. Plaintiff submitted his interrogatories on June 9, 1998. After numerous delays plaintiff went to the court for assistance. According to the Civil Rules defendant was required to reasonably respond to the questions directed and within a reasonable time. It was/should have been axiomatic that the court would slap defendant's hand so that the parties could get on with the discovery process. That was not the case.

1. The issue of making discovery work is one that the courts' jealously guard.

> Sanctions for failure to comply with discovery orders must be applied diligently both to penalize those whose conduct may be deemed to warrant such sanctions and to deter those who might be tempted to such conduct in absence of such deterrent. Roadway Exp., Inc. v. Piper, 100 S.Ct. 2455 (1980).

28 U.S.C. Rules of Civil Procedure, Rule 37, Note 6—Deterrence.[4] Here is what happened. Plaintiff submitted his interrogatories on June 9, 1998. On September 23, 1998, defendant Curt Harvey signed the interrogatories. This was approximately 77 days late. Plaintiff alleged 9 unresponsive answers.[5]

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[4] Washington Rules were modeled on federal discovery rules. See Seattle Times Co. v. Rhinehart, 104 S.Ct. 2199 (1984).

[5] Other answers were lacking in substance but could not be completely rejected as having missed the mark.

Motion To Compel was denied with no reason given - except for the "reviewed all the documents."

2. Plaintiff is pro se. He only has the rules to guide him. All the rules suggest that the Motion To Compel was standard. Now there are no guides. How is plaintiff suppose to get the information/evidence he needs to present his case. Why is his evidence somehow less important than other litigants? More importantly, was the original request somehow a violation of the rules? Would a similar request in some other form meet with the same results? If so, why? If the rules say a litigant can get the information through an interrogatory, then why can't he?
3. The Order is especially defective when looking at the importance and openness of the discovery process.

> The discovery rules are intended to make a trial less a game of blindman's buff and more a fair contest with the basic issues and facts disclosed to the fullest practical extent. Taylor v. Cessna Aircraft Co., Inc., 39 Wn.App. 828 (1985).

Washington Practice-Rules Practice, Orland & Tegland, West Publishing Co., © 1992, CR 26 p. 96. See also State v. Hamilton, 24 Wn.App. 927 (1979) and Peacock v. Piper, 81 Wn.2d 731 (1973).

4. The Motion To Compel sets the foundation for dealing with the discovery process. By denying the motion the court has opened up the discovery process for further abuses by the "unjustly enriched" party.

***Subsequent Motions***

The Motion To Compel relating to the 2nd request for documents resulted in no information. The 10 objections effectively prevented any information given by defendants. That motion cost plaintiff $250. Why? How did plaintiff abuse the process? Plaintiff even

responded to the objections prior to the Motion to show his good faith. Motion denied and plaintiff was fined $250. Those costs should have been applied to defendant for the discovery abuses related to the 10 unjustified objections - not to plaintiff for seeking relevant information under CR 26.[6]

> Sanctions provided by this rule for failure to comply with discovery requirements serve threefold purpose in that preclusionary orders ensure that party will not profit from its own failure to comply, in that the sanctions are also specific deterrents and, like civil contempt, seek to secure compliance with particular order at hand, and also courts are free to consider general deterrent effect their orders may have on case and other litigation provided that party on whom they are imposed is, in some sense, at fault.

Cine Forty-Second St. Theatre Corp. v. Allied Artists Pictures Corp., 602 F.2d 1062 (1979). Plaintiff complains that defendant is abusing the discovery process and sanctions are imposed ***against*** the plaintiff.

***Defendant's Motion For Protective Order***

This motion violated the Civil Rules. There was suppose to be a counsel conference prior to making the motion. Not only that but at this exact same time, plaintiff was seeking a conference (under CR) to be able to motion the court on alleged improper actions of defendant's attorney.[7] Plaintiff, pro se, was following the rules while the defendant represented by an attorney was circumventing them. The court, responding to this violation, stated that "and it appearing that further compromises on this motion

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[6] Unless plaintiff was somehow abusing the discovery process.

[7] Defendant told the two Imaginetic employees to ignore their subpoena. Plaintiff had to cancel/reschedule everything because of this abuse.

would not be productive." This was not true.[8] But even if it was, the court, under the rules, was not suppose to address the Protective Order.[9]

Further, the Protective Order was a "bad faith" move on the defendant to counterattack plaintiff's Motion To Compel which was heard on the same day. There was absolutely not basis to present it, and even less to ***grant*** it.

***Plaintiff Has Not Been That Demanding***

In spite of charges that plaintiff is some sort of renegade pro se, plaintiff has not been that demanding. Simple interrogatories and a small 1st request for documents are the only real information that plaintiff has received from defendant. The 2nd request met with no information and 10 objections, coupled with a cost of $250 imposed by the court. The 3rd request was quashed in its entirety by the court. The 4th request is at the court now - but which evidence is more important? The 2nd, 3rd, or 4th? Isn't it all? Most of this information should have been available for deposing the 4 individuals plaintiff was able to depose prior to the Protective Order.

> There is abuse of trial court's discretion in denying discovery when discretion exercised is manifestly unreasonable, or exercised on untenable ground, or for untenable reasons. Barfield v. City of Seattle, 100 Wn.2d 878 (1984).

Id., p. 98. What is the basis that the court is denying these requests for documents? Are all the requests somehow irrelevant, abusive or in some other way in

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[8] Most of the issues relating to the Protective Order had been worked out by the parties prior receiving the order.

[9] LR 37 re: Conference of Counsel. - The Court will not entertain any motion or objection with respect . . . unless it affirmatively appears that counsel have met and conferred with respect thereto. Further, the court had previously criticized plaintiff in denying one of his motions - "and that the motion does not appear to have been brought in conformity to LR 7."

violation of the rules? Did plaintiff in some way violate the rules in seeking this information? Why the fine?

***Evidence For Trial***

Plaintiff has effectively been prohibited from gathering evidence for trial. It would be unfair for the plaintiff to go to trial under these circumstances. However, maybe that's the point. Maybe because plaintiff hasn't been able to gather evidence under the rules, it will make it that much easier for the court to grant Summary Judgment for defendant, or for plaintiff to fail at trial.

**B. DUE PROCESS, RIGHT TO FAIR TRIAL, AND CODE OF JUDICIAL CONDUCT.**

> Although it has been held, in the absence of statutory provision, that bias or prejudice on the part of a judge, which is not based on interest, does not necessarily disqualify him, generally speaking, with respect to grounds for disqualification, *a litigant is entitled to a trial before a judge who is not biased or prejudiced,* and disqualification of a particular judge for bias or prejudice, although not technically required by the circumstances, is sometimes proper in order to dispel any thought or suspicion that the litigants may not be receiving impartial justice. *The right to a judge free from bias and prejudice is based on the due process clause of the federal Constitution, and on the constitutional right to a fair trial. . . .*
>
> If the requisite bias or prejudice exists, it is immaterial what caused it or whether it was warranted or unwarranted. A proper administration of the law demands not only that judges refrain from actual bias *but also that they avoid all appearance of unfairness, bias or prejudice.*
>
> All doubt or suspicion of bias should be jealously guarded against and, if possible, completely eliminated, and , when the

circumstances and conditions surrounding a litigation are of such nature that they might cast doubt on the impartiality of any judgment the judge may pronounce, the judge should recuse himself, even though he is not conscious of any bias or prejudice, or he personally believes himself to be unprejudiced, unbiased, and impartial. [Emphasis added][Citations omitted]

C.J.S. 48A §§ 107-108 Judges, page 728-730.

In a footnote to the C.J.S., at 732 it states:

**Accumulation of Information**

It is not essential for a successful petition for change of judge on grounds of prejudice that the prejudice and bias be exhibited by an isolated statement made by judge, and knowledge of existence of prejudice and bias may come to litigant as result of accumulation of information which finally convinces litigant that he cannot have a fair and impartial trial before a particular judge and should disqualify him.

Mo.—State ex rel. Interstate Motor Freight Systems, Inc. v. Hall, 409 S.W.2d 678.

Bias or prejudice of a judge must be based on more than mere conclusory allegations, and subjective conclusions or opinions that bias or the appearance of impropriety may exist ordinarily are insufficient to require a judge's disqualification. It is actual existence of prejudice on the part of a judge, not the mere apprehension of it by a party which disqualifies. So, it has been held that actual bias or prejudice must be shown, but it has also been stated that *actual prejudice is not required, and that the belief on the part of litigant that he cannot have a fair trial is sufficient ground for*

*disqualification.* [Emphasis added][Citations omitted]

Id., at 732.

**C. THIS COURT'S RESPONSIBILITY**

RCW 4.12.050 permits a party to change judges once as a matter of right, upon timely motion and affidavit of prejudice, without substantiating the claim of prejudice. . . .

Due process, the appearance of fairness doctrine and Canon 3(D)(1) of the Code of Judicial Conduct (CJC) also require a judge to disqualify himself if he is biased against a party or his impartiality may reasonably be questioned. A party claiming bias or prejudice must, however, support the claim; prejudice is not presumed as it is under RCW 4.12.050. Evidence of a judge's actual or potential bias is required before the appearance of fairness doctrine will be applied. [Citations omitted]

State v. Dominguez, 914 P.2d 141, 143-144 (Wash.App.Div. 3 1996).

Also,

. . . However, in deciding recusal matters, actual prejudice is not the standard. The CJC recognizes that where a trial judge's decisions are tainted by even a mere suspicion of partiality, the effect on the public's confidence in our judicial system can be debilitating. The CJC provides in relevant part: "Judges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned . . ." CJC Canon 3(D)(1) (1995). The test for determining whether the judge's impartiality might reasonably be questioned is an objective test that assumes that "a

reasonable person knows and understands all the relevant facts." [Citations omitted]

Sherman v. State, 905 P.2d 355, 378 (Wash. 1995).

Plaintiff suggests that a "reasonable man" would find the following to be the court's bias and prejudicial decisions (absent some discovery abuse on the part of the requesting party):

1. Denial of Motion To Compel relating to 9 alleged unresponsive answers.
2. Denial of plaintiff's request for a hearing relating to alleged "good faith" violations by defendant. Plaintiff was seeking help from the court relating to the discovery process, which was denied. Then a short time later, the court granting a Protective Order against plaintiff - seemingly with little or no justification.
3. Denial of Motion To Compel relating to 10 objections of 12 requests. Plus fined $250 for bringing the motion.[10]
4. Simultaneous (to #3) ruling for a Protective Order in which the court quashed Plaintiff's 3rd Request For Documents. In addition, it called for all discovery going through the court - defendant is/was through with discovery so this just penalized plaintiff. In short, ***everything*** that defendant had asked for, he got.[11]
5. Protective Order may have been in violation of the Civil Rules - in which case it may have been improper for the court to even hear it.

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[10] A *name* was "unduly burdensome." Credit card receipt was "irrelevant." List of vendors (maybe 60 altogether) was "unduly burdensome." Manual check register for 3 month period as "burdensome" and "irrelevant." Year end files plaintiff worked on as "irrelevant."

[11] It was particularly galling to be told that certain depositions had to be done at the defendants' law offices at plaintiff's expense. Plaintiff had already identified the place and conditions as was his right under the rules.

6. This court has failed to provide any justification for the actions against plaintiff - other than the standard "reviewed all the material." If plaintiff abused the discovery process, it would be fairly easy for the court to point that out in its decisions. So far it has not elaborated on the situation.

**CONCLUSION**

Plaintiff cannot receive a fair trial. Already the process has been tainted by this court's decisions relating to the discovery process. Evidence gathering is an essential part of the judicial process. This court has severely curtailed that open process in this case. Time has almost run out. "There is abuse of trial court's discretion in denying discovery when discretion exercised is manifestly unreasonable, or exercised on untenable ground, or for untenable reasons." Barfield.

RESPECTFULLY SUBMITTED this *15TH* day of March, 1999.

"s/John L. Corrigan"
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